

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WISCONSIN**

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In Re: Sylvia K. Banda

Chapter: 13

Debtor

Case No. 13-25901-PP

N30W23536 Greenfield Court  
Pewaukee, WI 53072  
Social Security No. xxx-xx-7221

Sylvia K. Banda

Adversary No.

Plaintiff

VS.

Bank of America, N.A.  
Green Tree Servicing, LLC, as servicer  
Defendants

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**COMPLAINT**

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NOW COMES the Plaintiff Sylvia K. Banda by and through her attorney, Shane S. Cigel, of the Law Offices of Dantzman and Dantzman, respectfully submitting this Complaint to avoid the second mortgage lien of Defendants, Bank of America, N.A., and Green Tree Servicing, LLC as servicer, as it is wholly unsecured and impairs the debtor's property located at N30W23536 Greenfield Court, Pewaukee, WI 53072.

In support Plaintiff respectfully represents to the Court as follows:

1. Plaintiff is the debtor in the above captioned Chapter 13 bankruptcy proceeding.
2. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. 1471. This is a core proceeding under 28 U.S.C. 157(b)(2)(K).
3. Plaintiff filed the instant Chapter 13 bankruptcy on April 30, 2013.
4. Bank of America, N.A., hereinafter "Defendant," holds a second mortgage on Plaintiff's homestead property located at N30W23536 Greenfield Court, Milwaukee, WI 53072.
5. This mortgage is a second mortgage lien which attaches to debtor's primary

residence located at N30W23536 Greenfield Court, Milwaukee, WI 53072.

6. At the time of filing, the Plaintiff's property had a fair market value of \$198,000.00, which is indicated by the Waukesha County tax bill estimated fair market value. (See Exhibit A).
7. Plaintiff's property, at time of filing, had the following prior mortgage liens: First mortgage with Bank of America, N.A, in the amount of (\$250,534.22) (See Exhibit B).
8. The Second Circuit, in In Re Pond, 252 F. 3d 122, 126 (2d Cir. 2001), following the majority view in this area, held that the "antimodification protection afforded by 11 U.S.C. 1322(b)(2) [applies only when the creditor's claim] is at least partially secured." See also, In Re Bartee, 212 F.3<sup>rd</sup> 277 (CA5 2000); In Re Tanner, 217 F. 3<sup>rd</sup> 1357 (CA11 2000).
9. Here, the second mortgage lien does not attach to any equity and any claim filed, should be treated as wholly unsecured. The Defendant's second mortgage balance was in the approximate amount of (\$44,056.23) at time of filing (See Exhibit C).
10. Pursuant to 11 U.S.C. Sec. 506(a), "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."
11. Pursuant to 11 U.S.C. Sec. 506(d), "To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, ...."
12. Thus, since Defendant's second mortgage does not attach to any equity in the Debtor's property it is wholly unsecured under 11 U.S.C Sec. 506(a), and is void pursuant to 11 U.S.C. Sec. 506(d).

WHEREFORE, pursuant to 11 U.S.C. Sec. 506(d), Plaintiff, by and through his attorney, respectfully requests this Court enter an Order avoiding the Defendant's second mortgage lien, and treating any claim of the Defendant as general unsecured non-priority.

Dated this 10th day of September 2013.



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**Exhibit A**

**Pay Options** **Tax Bill** **Tax Listing** **Search**

Tax Key:

4/11/2013 2:16:15 PM

PWC 0918002004

WAUKESHA COUNTY

Tax Year: 2012

CITY OF PEWAUKEE

**OWNER NAME AND MAILING ADDRESS**

SYLVIA BANDA  
N30W23536A GREENFIELD CT  
PEWAUKEE, WI 53072

**PROPERTY ADDRESS**

N30W23536A GREENFIELD CT

**LEGAL DESCRIPTION**

UNIT 1 WESTERN SUNSET CONDOMINIUMS NO 2 LOT 197 FIVE FIELDS ADDITION NO 3 PT NW1/4 SEC 14 T7N R19E DOC# 3461161

**ASSESSED VALUES**

Tax Year:	2012	Exempt:	NO
Assessment Type:	FULL	Use Value Assessment:	NO
Assessment Ratio:	101.35%	Prior Taxes Due To:	

Values	Assessed	Est. Fair Market
Land	\$64,000.00	\$63,100.00
Improvement	\$136,700.00	\$134,900.00
Total	\$200,700.00	\$198,000.00

**LINE ITEMS**

Line Item Description	Tax Amount	Tax Rate Per \$1000 of Assessed Value
STATE OF WISCONSIN	\$33.92	0.1689890
COUNTY OF WAUKESHA	\$420.72	2.0962565
CITY OF PEWAUKEE	\$604.75	3.0131810
PEWAUKEE SCHOOL	\$2,208.24	11.0026855
WAUKESHA TECH COLLEGE	\$259.93	1.2951210
GROSS GENERAL TAXES	\$3,527.56	17.5762330
SCHOOL TAX CREDIT	(\$335.12)	-1.6697624
FIRST DOLLAR CREDIT - 4312	(\$74.02)	
LOTTERY CREDIT 4312	(\$103.18)	
NET GENERAL TAXES	\$3,015.24	15.9064706
DELINQUENT UTILITIES	\$774.00	N/A
STORM WATER	\$72.00	N/A
GARBAGE / RECYCLING	\$191.00	191.0000000
TOTAL SPECIAL ASSESSMENTS	\$1,037.00	N/A
<b>TOTAL TAX BILL</b>	<b>\$4,052.24</b>	

**2012 TAX BILL PAYMENT OPTIONS**

Installments	Amount Due	Due By	Pay to Agency
Full Amount Due	\$4,052.24	1/31/2013	LOCAL
First Installment	\$2,493.24	1/31/2013	LOCAL
Second Installment	\$1,559.00	7/31/2013	COUNTY

**2012 TAX YEAR TRANSACTIONS**

Transaction	Effective	Paid To	Description	Tax	Interest	Penalty	Other Charges	Over Payment	Total
12/31/2012	12/31/2012	LOCAL	PAYMENT	(\$2,493.24)	\$0.00	\$0.00	\$0.00	\$0.00	(\$2,493.24)

**ALL OUTSTANDING BALANCES DUE THROUGH APRIL, 2013**

Year	ALL OUTSTANDING BALANCES DUE THROUGH				Other Charges	Balance Due	Pay to Agency	RECALCULATE
	Tax Due	Interest	Penalty	April				
2012	\$1,559.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,559.00	COUNTY	<b>PAY ONLINE</b>
Totals:	\$1,559.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,559.00		

# Exhibit B

B10 (Official Form 10) (4/13)

UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF WI		PROOF OF CLAIM
Name of Debtor: <b>Sylvia K. Banda, fka Sylvia K. Owor</b> Case Number: <b>13-25901-PP-13</b>		<b>COURT USE ONLY</b>
<i>NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.</i>		
Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>Bank of America, N.A.</b>		
Name and address where notices should be sent:  <b>Bank of America, N.A. P.O. Box 660933 Dallas, TX 75266-0933</b>		<input type="checkbox"/> Check this box if this claim amends a previously filed claim.  <b>Court Claim Number:</b> _____  Filed on: _____
Name and address where payment should be sent (if different from above):		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
<b>1. Amount of Claim as of Date Case Filed:</b> <b>\$ 250,534.22</b> If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
<b>2. Basis for Claim:</b> <u>Money loaned</u>		
<b>3. Last four digits of any number by which creditor identifies debtor:</b> <b>XXXXX8928</b>		<b>3a. Debtor may have scheduled account as:</b> _____
<b>4. Secured Claim</b> Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.  <b>Nature of property or right of setoff:</b> <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor <input type="checkbox"/> Vehicle <input type="checkbox"/> Other <b>Describe:</b> <u>N30W23536 Greenfield Court, Unit 1, Pewaukee, WI 53072</u> <b>Value of Property:</b> \$ _____ <b>Annual Interest Rate:</b> <u>4.625</u> <input checked="" type="checkbox"/> % Fixed or <input type="checkbox"/> Variable (when case was filed)		
<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a).</b> If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).           </div> <div style="width: 30%;"> <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. § 507(a)(4).           </div> <div style="width: 30%;"> <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).           </div> </div> <div style="text-align: right; margin-top: 10px;"> <b>Amount entitled to priority:</b> \$ _____       </div>		
<div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7).           </div> <div style="width: 30%;"> <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).           </div> <div style="width: 30%;"> <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(...).           </div> </div> <div style="text-align: right; margin-top: 10px;"> <b>Amount Unsecured:</b> \$ _____       </div>		
<small>*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>		
<b>6. Credits.</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		

# Exhibit C

B 10 (Official Form 10) (12/11)

UNITED STATES BANKRUPTCY COURT		Eastern District of Wisconsin	PROOF OF CLAIM
Name of Debtor: Sylvia Banda		Case Number: 13-25901	
<p><b>NOTE:</b> Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.</p>			
Name of Creditor (the person or other entity to whom the debtor owes money or property): Bank of America N.A.		<b>COURT USE ONLY</b>	
Name and address where notices should be sent: Green Tree Servicing LLC 7360 S. Kyrene Rd. T-120 Tempe, AZ. 85283		<input type="checkbox"/> Check this box if this claim amends a previously filed claim. <b>Court Claim Number:</b> _____ <i>(If known)</i> <b>Filed on:</b> _____	
Telephone number: (877) 256-4871 email: Recovery.Bankruptcy@gt-cs.com			
Name and address where payment should be sent (if different from above): Green Tree Servicing 345 St. Peter St. L800R St. Paul, MN. 55102		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.	
Telephone number: (877) 256-4871 email: herschel.r.hoyt@gt-cs.com			
<b>1. Amount of Claim as of Date Case Filed:</b> \$ <b>44,056.23</b>			
If all or part of the claim is secured, complete item 4.  If all or part of the claim is entitled to priority, complete item 5.  <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.			
<b>2. Basis for Claim:</b> <u>Mortgage Note</u> <small>(See instruction #2)</small>			
<b>3. Last four digits of any number by which creditor identifies debtor:</b> <u>0 0 4 8</u>	<b>3a. Debtor may have scheduled account as:</b> <u>Sylvia Banda</u> <small>(See instruction #3a)</small>	<b>3b. Uniform Claim Identifier (optional):</b> <small>(See instruction #3b)</small>	
<b>4. Secured Claim</b> (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.  Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: N30W23536 GREENFIELD CT # 1 PEWAUKEE WI			
<b>Value of Property:</b> \$ _____		<b>Basis for perfection:</b> _____	
<b>Annual Interest Rate</b> _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable <small>(when case was filed)</small>		<b>Amount of Secured Claim:</b> \$ <b>44,056.23</b>	
<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a).</b> If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.			
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).		<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).		<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).	
<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).		<input type="checkbox"/> Other – Specify _____ <small>applicable paragraph of 11 U.S.C. § 507 (a)(____).</small>	
<i>*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</i>			
<b>6. Credits.</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)			